and conditions of the agreement, or that non-approval by the State Council of their application for amendment of the express condition on Lot No. 3 was the "final result". They are contradicted by the very words in their own letter of April 27, 1962.

As to the effect of the vendors' repudiation of their contract it has been said that such repudiation is "writ in water" unless accepted by the other party. In *White and Carter (Councils) Ltd* v. *McGregor*, referred to earlier, Lord Morton of Henryton said: (at p. 25)

"It is well established that repudiation by one party does not put an end to a contract. The other party can say 'I hold you to your contract, which still remains in force.' What then is his remedy if the repudiating party persists in his repudiation and refuses to carry out his part of the contract? The contract has been broken. The innocent party is entitled to be compensated for damages for any loss which he has suffered by reason of the breach and in a limited class of cases the court will decree specific implement."

See also *Heyman* v. *Darwins Ltd.*[2]

Finally, as to laches and acquiescence, there is the clearest evidence — from the correspondence, the conduct of the parties, and the death of Yong Fook Choon on November 30, 1961 making it impossible for any valid and registrable transfer to be executed until constitution of a proper legal representative 16 months and 5 days later — which disposes of the defence of laches and acquiescence.

For the above reason the defence fails on all grounds. Since the plaintiffs are ready, willing and anxious to obtain specific performance relating only to Lot No. 145 I am of opinion that, in accordance with the principles laid down in sections 13 and 15 of the Specific Relief (Malay States) Ordinance, 1950, they should be entitled to the relief claimed in prayer 2 of their statement of claim. From the total area of 14,400 square feet 1611 square feet and 1250 square feet respectively fall to be deducted in respect of Lot Nos. 3 and 165 leaving 11,539 square feet within Lot No. 145. The abatement in the purchase price at $2.70 per square foot amounts to $7,724.70. I accordingly order that the defendants do specifically perform the said contract in so far as it relates to Lot No. 145 by executing a proper registrable transfer of 11,539 square feet thereof, being the portion marked and delineated in the plan attached to the agreement of March 26, 1961, against payment of the full balance of the agreed purchase price less the sum of $7,724.70. No damages have been asked for, and I make no order in this respect. Costs of this action to the plaintiffs. Liberty to apply.

Order accordingly.

Solicitors: *Shearn, Delamore & Co.*; *Lovelace & Hastings.*

PUBLIC PROSECUTOR v. SHEPHERD

[A.Cr.J. (Hepworth J.) January 7, 1964]
[Penang — Criminal Appeal No. 25 of 1963]

Road Traffic Ordinance, 1958—Charge under s. 36(1) —Notice of intended prosecution—Notice incomplete— Date time and place of accident not specified in notice as required by s. 56(b)—Whether notice a valid notice.

Four hours after an accident a notice of intended prosecution was served on an accused. In the notice so served neither the date nor time of the accident was stated.

Held: there had been a complete failure to comply with the provisions of the Ordinance which required that date, time and place of accident should be specified and the case could not be treated on par with those where date, time and place were specified but were inaccurate. The notice was not therefore a notice within the meaning of section 56(b) of the Road Traffic Ordinance, 1958.

Cases referred to:—

(1) *Public Prosecutor* v. *Teh Khian Long* [1961] M.L.J. 47.

(2) *Pope* v. *Clarke* [1953] 2 All E.R. 704.

(3) *Young* v. *Day* (1959) 123 J.P. 317; 109 L.J. 519.

CRIMINAL APPEAL.

Wan Ismail bin Wan Mohd. Salleh (Deputy Public Prosecutor) for the appellant.

Chin Yew Choe for the respondent.

Hepworth J.: The respondent had been acquitted of the offence of driving a motor vehicle without due care and attention under section 36(1) of the Road Traffic Ordinance, 1958. From this order of acquittal the Public Prosecutor appealed.

The reason why the learned Magistrate acquitted the respondent was that on the face of the notice of intended prosecution (Exhibit P.5) it was incomplete, firstly because the nature of the offence for which the defendant was to be prosecuted was insufficiently particularised and was not clear and secondly because the provisions of section 56(b) of the Ordinance had not been otherwise complied with in that the police had failed to specify the date, time and place of the accident in the notice.

In my opinion the offence was sufficiently particularised and the question which remained to be answered was whether or not by failing to specify the date, time and place of the accident on the notice of intended prosecution the notice was invalid.

In support of his appeal the learned Deputy argued that as the notice had been served on the respondent only four hours after the accident, out of which the charge arose, had happened, the respondent must have been perfectly clear in his mind what the notice was referring to and that accordingly the purpose of the section had been achieved. He quoted in support of his contention the judgment of Thomson C.J. (as he then was) in *Public Prosecutor* v. *Teh Khian Long.*[1] In that case, the case of *Pope* v. *Clarke* [2] was

quoted with approval as authority for the proposition that the provision that a notice of intended prosecution should be served on the defendant is mandatory but the provision with regard to the specification of the time of the alleged offence is only directory. The purpose of the notice was to call the respondent's attention to the fact that he was to be prosecuted while the circumstances were still fresh in his mind. If that purpose was fulfilled an incorrect statement as to the time of the accident did not invalidate the notice. In *Teh Khian Long's case* the charge had specified that the offence had taken place at 5.50 p.m. on the 9th November, in Jalan Raja, Kuala Lumpur, whereas the notice of intended prosecution stated that the offence had taken place at 6 p.m. on the 8th November in Jalan Raja, Kuala Lumpur. In his judgment the learned Chief Justice stated:—

"It is true that here there was a discrepancy both as to the date and as to the time. The discrepancy as to the date, however, was of one day only and in the absence of any knowledge whatsoever of the circumstances of the case the Magistrate was not in a position to form any opinion as to whether the defendant could have been prejudiced in any way. If it had transpired at the end of the trial that the defendant had been involved in two accidents on two successive evenings in Jalan Raja, then the discrepancy between the charge and the notice would have called for very very careful examination with a view to ascertaining whether the defendant could have been in any way prejudiced. But until that position arose the discrepancy was so small that the Magistrate to my mind should have brushed the point aside on the ground that the mandatory part of the section had been complied with."

Mr. Chin, however, on behalf of the respondent, quoted the case of *Young* v. *Day* [3] in which the Divisional Court in England refused to set aside a decision of the Magistrates that a notice was insufficiently particularised where it stated the place of the offence as "the Hothfield to Bethersden Road" which was a minor road four miles long.

In *Teh Khian Long's case* the only real discrepancy was the date, the times being only very slightly dissimilar and the place of the accident being stated accurately in both the notice and the charge. In the present case neither the date nor the time nor the place of the accident were stated in the notice. Had it been the intention of the Legislature that a notice of intended prosecution, given very shortly after the commission of the offence, did not require to state the date, time and place of the offence, then the Ordinance would have said so. This was not a case where a genuine effort had been made to specify the date, time and place in the notice, and some discrepancy had crept in. This was not a case of a discrepancy so small that it could be brushed aside. There had been complete failure to specify either the date or the time or the place of the accident on the notice of intended prosecution and in my opinion Exhibit P.5 did not in consequence constitute a notice of intended prosecution within the meaning of section 56(b) of the Ordinance.

Accordingly I dismissed the appeal.

Appeal dismissed.

Solicitors: *Presgrave & Matthews.*

DE SILVA v. PUBLIC PROSECUTOR

[A.Cr.J. (Gill J.) January 11, 1964]

[Malacca — Criminal Appeal No. 13 of 1963]

Criminal Law—Bribery and corruption—Helping and recommending application for hawker's licence—Payment received for—Whether act in relation to his principal's affairs—Prevention of Corruption Act, 1961, s. 4.

Criminal Procedure—Impeaching credit of complainant—Application for—Refusal—Criminal Procedure Code (S.S. Cap.21), s. 124(2).

Evidence—Contradictions, discrepancies and falsehoods in complainant's evidence—Whether evidence to be rejected on that account.

The appellant, an Inspector in the Health Department, was charged under section 4 of the Prevention of Corruption Act for receiving four sums of money as inducement for doing an act in relation to his principal's affairs to wit assisting the complainant in obtaining a hawker's licence. He was convicted and sentenced to 6 months imprisonment on each charge. On appeal it was argued that the learned President (a) failed to apply the appropriate test in respect of the defence application under section 124(2) of the Criminal Procedure Code for the use of the complainant's statement to the police to impeach his credit; (b) erred in law in rejecting the evidence of good character of the appellant; (c) failed to apply his mind to the admitted vindicativeness of the complainant; (d) failed to direct his mind to the contradictions and discrepancies in the evidence.

Held: (1) the acts of the appellant were acts in relation to his principal's affairs within the meaning of section 4 of the Prevention of Corruption Act;

(2) the procedure as regards discrediting a witness by reference to his previous statement to the police is cumbersome and slow and therefore should not be used unless the apparent discrepancy is material to the issue. *Muthusamy* v. *Public Prosecutor* [1] followed;

(3) there was no evidence to justify the third ground of appeal;

(4) the contradictions and discrepancies or even demonstrable falsehoods in the evidence of a witness are not sufficient reason for rejecting the whole of the evidence of such witness. The proper approach is to view the evidence with suspicion and to treat it with caution. *Khoo Chye Hin* v. *Public Prosecutor* [2] followed.

Cases referred to:—

(1) *Muthusamy* v. *Public Prosecutor* [1948] M.L.J. 57.

(2) *Koon Chye Hin* v. *Public Prosecutor* [1961] M.L.J. 105.

CRIMINAL APPEAL.

David Marshall for the appellant.

Salleh bin Abbas (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.